THE DIVORCE PROBLEM IN THE U.S.

P. L. CRAYTON, S.T.L.

The DIVORCE PROBLEM

IN THE

United States

BY

PATRICK L. CRAYTON, S.T.L.

1904:
THOMAS J. FLYNN & CO.
PUBLISHERS
62 AND 64 ESSEX STREET
BOSTON, MASS.

THE DIVORCE PROBLEM IN THE UNITED STATES

BY

PATRICK L. CRAYTON, S. T. L.

1904
THOMAS J. FLYNN & CO.
Publishers
62 AND 64 ESSEX STREET
BOSTON, MASS.

Imprimatur:

✠ JOANNES JOSEPHUS,

Archiepiscopus Bostoniensis.

Nihil Obstat:

EDMUND T. SHANAHAN, D. D.,

Censor Deputatus.

PRINTED BY
WASHINGTON PRESS,
BOSTON, MASS.

PREFACE.

These pages are written to illustrate the fact that divorce, with its present legislation in the United States, is an appalling menace to social order and morality; to demonstrate that the reforms ordinarily proposed do not meet the exigencies of the case; and to suggest the remedy for the existing disastrous condition of affairs. They are addressed to "the general reader" in whom, it is thought, the importance of the subject is well calculated to awaken a more than passing interest. They are hardly intended for the specialist: there is no discussion of the moot-points of law so pleasing to the lawyer; nothing new and, perhaps, but little of interest to the statistician; no exhaustive theological inquiry. Some facts of the law and of our practice are presented; a few statistics, confirmatory of stated views, are inserted; the doctrinal tenets of certain religious bodies on this subject are outlined.

To those kind friends who have in word and deed encouraged the presenting of these pages to the public, the writer desires to express his gratitude.

Gloucester, Mass.
Feast of St. Anne, 1904.

THE DIVORCE PROBLEM IN THE UNITED STATES.

Occasional rumors to the effect that President Roosevelt intends recommending that Congress provide means for making an exhaustive inquiry into the question of divorce in this country with a view to enacting a Federal divorce law; bills, presented to Congress in recent years, seeking to advance some reform in this matter; the bill prepared by a committee of The State Bar Association of Ohio, and presented to the Legislature of that State, looking for the regulation of judicial procedure in matters of divorce; the growing agitation in many spheres of secular and ecclesiastical activity manifested a few months ago in the recommendation that divorcees and their consorts be ostracized from society, and more recently in the meeting, in New York City, of eminent Protestant ministers and laymen, representatives of the Episcopal, Methodist, Presbyterian, Reformed, Evangelical, Lutheran, Baptist, Congregational, Universalist, Unitarian, and Reformed Presbyterian churches "to decide upon some final method involving a comity of relation and uniform practice to treat the great evil of divorce in this country, so that persons who were married under the rites of one church cannot, after securing divorces, re-marry under the rites of some other Protestant Church;"*—all seem to indicate that the question of divorce in this country is on the verge of one of its periodical discussions. Though it savors of the impossible to attempt giving expression to anything new or original on so threadbare a topic, yet an exposition of the more important aspects of the problem in our own country may be, at this time, not an unwelcome contribution to the already voluminous literature of this ever-recurring theme.

* Rt. Rev. David H. Greer, Bishop-Coadjutor of the Episcopal Archdiocese of New York.

The divorce question is, indeed, one of the most serious problems presented to us. It demands its answer more and more urgently every day, and nowhere more imperatively than here in the United States. Divorce is one of the crying evils of our country, and has been greatly aggravated in recent years by the operations of "the divorce mills" in New York City, Buffalo, and elsewhere. It seems destined to bring upon the country disaster far greater than the bitterest political strifes, and it is no exaggeration to state that of the many evils now arrayed against society none is greater than that threatened by the facility and the frequency with which divorces are obtained. This bane of our day has already cast a blight on our morals; it has shaken our best institutions, infested all classes of society, and its demoralizing work is not yet consummated. It is not alone our congested cities that are infected with this moral cancer, but it has spread to the quiet of hillside and hamlet, and no part of the land is a stranger to its presence. It continues to grow amongst us day by day; it strikes deeper root on all sides. Its hideous aspect is ever becoming more and more familiar to us. Many even smile over its attendant disclosures of depravity as pleasant tid-bits of scandal with which the morning papers agreeably enliven the breakfast table, while too few reflect upon the alarming magnitude of the danger with which it is fraught. Indeed, so dulled has the public conscience become in this respect, so slow its apprehension of this mighty evil pressing upon us that but too rarely has a warning voice been raised against it.

The interest which should, and among thoughtful men does, attach to the divorce problem in the United States is, indeed, great. The late Mr. Gladstone, in reference to this matter, wrote: "I incline to think that the future of America is of greater importance to Christendom at large than that of any other country; that that future, in its highest features, vitally depends upon the incident of marriage; and that no other country has ever been so directly challenged as America now is to choose its course definitively with reference to one, if not more than one, of the

very greatest of those incidents." (The Question of Divorce, North American Review, Dec. 1889.) And from time to time, in the press and otherwise, the attention of the public has been particularly directed to the abuses of divorce, and to the facilities afforded by American law—and by the looseness of its administration—for the disruption of the family tie. The United States may truly claim a sort of disgraceful pre-eminence in this matter of divorce, since so many of its States are so lavish in the accumulation of causes for which absolute separation may be procured, and that with consequent freedom to enter legally into new ties.

It is not the purpose of these pages to enlarge upon the evils of the American system of divorce. These evils are notorious. In 1887, an appropriation was authorized by Congress providing means "to enable the Commissioner of Labor to collect and report to Congress the statistics of and relating to marriage and divorce in the several States and Territories, and in the District of Columbia." This work, notwithstanding the many difficulties necessarily encountered, was well accomplished, and a voluminous report, prepared under the supervision of the Hon. Carroll D. Wright, was transmitted to Congress and printed.

Even a superficial examination of this report will acquaint one with the magnitude of the proportion to which the business of divorce has attained in this country. Col. Wright's report covers a period of twenty years, from 1867 to 1886 inclusive. It appears that during this entire period there were granted in the United States (160 counties, or 6 per cent. of the counties not included) 328,716 divorces. The rate varies considerably in the different States. Illinois heads the list with 36,072. Ohio is second with 26,327. Indiana has 25,193. Michigan is next with 18,433. Some of the smaller States return proportionally large numbers. Rhode Island offers 4,462; New Hampshire returns 4,979; Connecticut, 8,542. But these numbers are not to be equalized through the years covered by the report, because it is shown that during the entire period divorce has been increasing at a rate more than twice as great as that of the increase of the population. Each year, with the sole

exception of the year 1884, witnessed a larger number of divorces than any preceding year.* From 9,937 divorces granted in the United States in 1867 the total reached 25,535 for the year 1886; an increase of nearly 157 per cent. in twenty years, while the population increased but 60 per cent. in the same period.

Changes in legislation, either an extension of the privileges of divorce laws, facilitating the securing of decrees, or an addition of causes to those already existing, and especially the changed social and economic condition of woman, may account, in some measure, for the marked increase in the number of divorces granted in 1886 compared to the number granted in 1867. However, a very satisfactory method of establishing a comparison which will show a steady increase of divorces during those twenty years is to be found in using periods, for instance, the quinquennial and decennial periods into which the twenty-year period naturally divides itself. In the first quinquennial or five-year period 53,574 decrees of divorce were granted in the whole country; 68,547 in the second period; 89,284 in the third; 117,311 in the fourth. In other words, there is ever an increase, and no instance of a decrease, for in the country as a whole the number of divorces granted in the second of these periods is 27.9 per cent. more than in the first, the number granted in the third period is 30.3 per cent. more than in the second, the number granted in the fourth period is 31.4 per cent. more than in the third, and the total number of divorces granted in this fourth five-year period (1882-1886) is 119 per cent. more than the total number granted in the first five-year period (1867-1871). Grouped into decennial or ten-year periods, the first of these periods has 122,121 divorces; the second, 206,595. In other words, the total number of divorces granted in the whole country during this latter period (1877-1886) is 69.2 per cent. more than the number granted in the first decennal period (1867-1876).**

---

* "Marriage and Divorce."— Carroll D. Wright, pp. 442–443.

** "Marriage and Divorce."— Wright, pp. 141–142.
"Marriage and Divorce."— D. Convers, p. 169.

This brief statement of the leading facts gathered from official statistics—facts which acquire additional significance when pursued into detail—is enough to show that there has been a steady increase in the number of divorces granted in those years covered by Col. Wright's report. Nor is there much reason to suppose that the rate of increase which had prevailed during those twenty years has been in any degree checked in the years that have followed. On the contrary, it is notorious that the business of divorce has been, and is, everywhere accelerating, and it is probable that the ratio of increase is also steadily rising. This is the case in Massachusetts. The statistics of that State show that in the twenty-year period (1867-1886) 9,853 divorces were granted, a yearly average of less than 500. But in 1902 the whole number of divorces granted was 1,480, which is 104 more than the number granted in 1901, and 322 more than the number granted in 1900; and it further appears that the total number of divorces granted in 1902 is greater by 278 than the average number granted in the ten-year period of 1893-1902, and greater by 537 than the average number granted in the twenty-year period of 1883-1902.* The report of the Indiana Department of Statistics shows that there was one divorce for about every six marriages in that State for the year ending October 31, 1900. In other words, there were 27,671 marriages to 4,699 decrees of divorce. The court officials estimate that not less than 2,000 other suits for divorce were brought which were either withdrawn, or in which the decree was denied by the court. This State has shown some improvement of late, for in 1901 there were 3,585 divorces granted, and 3,552 divorces in 1902. In Ohio things have been getting worse. In 1900, there were granted 2,306 divorces, or one divorce to 14.5 marriages, but in 1902 there were 4,276 divorces, or one to 8.8 marriages. In Maine matters are still worse, for in 1902 there were 905 divorces, or about one divorce to every six marriages.

---

* The number of libels in which decrees *nisi* were entered during the year 1902 is 1,601. Cf. "Sixty-first Report of Births, Marriages and Deaths in Massachusetts," pp. 96–111; 169–188.

Owing to the fact that not all of our States publish annually the number of divorces granted within their respective jurisdictions, it is extremely difficult to state exactly the number of divorces granted in the whole country in any one year, though from time to time this has been attempted. The calculation of the Rev. B. J. Otten, S. J., is worthy of special notice. "In the monthly Bulletin of the Department of Labor for September, 1902, are given the divorces granted in sixty cities in all parts of the United States, the total number of these divorces granted in 1901 being 6,998. The population of these cities was at the time 8,146,833, or a little less than one-ninth that of the whole country. Hence, multiplying 6,998 by nine and one-tenth, we obtain for the whole country 63,681 divorces. . . Yet it may be objected that it is not fair to take only cities, because divorces are apt to be more numerous in cities than in the country. To remove this objection I have also gathered the divorces granted in sixty counties, the total number of which was found to be 11,120. The population of these sixty counties was at the time 13,359,714, or two-elevenths of the population of the whole country. Therefore, multiplying 11,120 by eleven halves, we again obtain for the whole country 61,160. Consequently, the lowest limit we can assign to the number of divorces granted in 1901 is 61,160. This, at an increase of 6 per cent. a year, as calculated above, gives for 1903 the respectable number of 68,499. Hence our courts broke up in 1903 nearly seventy thousand homes—a number sufficiently large to constitute a fair-sized city."* So summarily it is to be said that the divorce evil is as a tide, it "is rising all over the world, but nowhere is it so high, nowhere does it rise so fast as in these United States." (W. F. Wilcox.)

But before touching more directly the other elements of the divorce problem in this country, it is well that our readers' attention be directed to one fact which has an indisputable bearing on the question. Many and varied are the religious denominations in our midst, and it is

* "The National Evil of Divorce," by Rev. B. J. Otten, S. J., in The Messenger for April, 1904, p. 376.

patent that religious sentiment and teaching has its influence on divorce,* for to marriage, the antecedent of divorce, the people of the United States—of whatever professed belief—attach some religious characteristics. Therefore it is proper that something be inserted regarding religious teaching and practice in this matter. And since divorce is a consequent of marriage, as introductory to the exposition of the doctrinal tenets of the various religious denominations in our country whose influence on divorce legislation is undeniable, the nature and institution of marriage itself is outlined.

Marriage is the germ of human society; the seed which has developed into the family, the tribe, the nation in one line; the town, the city, the empire in another. Marriage marks the beginning of man's social development; it is the foundation of his social life; it is the basis of human society, and our existing civilization unquestionably rests upon marriage as Christianity has shaped it. For centuries, while that order of things which we call Christendom endured, the Catholic Church was the great ethical teacher of the developing civilization. The burden of her teaching was duty—the whole duty of man—and nowhere was that teaching clearer, more imperative, and productive of greater results than in her doctrine concerning matrimony. The Church, accepting in their entirety, the original attributes of marriage, brought to view the sacrament enfolding and consecrating them. She taught that marriage was instituted in the beginning by the Creator as a union between the first man and the first woman, made by a bond which was not to be broken except by the ending of the natural life to which it belonged. It began in Eden in that state of original justice in which the first human pair was constituted, but like other human things, it was subject to the consequences of the fall, and by degrees its original attributes of unity and indissolubility were impaired by the introduction of polygamy and divorce. These departures from the pure idea of marriage, due to the "hardness of heart"

---

* "Marriage and Divorce," — Wright, p 122.
"Marriage, Divorce and Separation," — J. P. Bishop, Nos. 92-95.

of the people, were tolerated under the primitive law given to the patriarchs and to Moses, polygamy being tacitly allowed, and divorce expressly regulated by that law.* This Mosaic dispensation was imperfect, provisional and partial, but with the coming of Christ upon earth, "That which was in part was done away, that which was perfect," had come. Christ, in the fulness of His power, promulgated the perfect moral law, and enacted with a new and more stringent obligation the laws of unity and indissolubility of marriage. He raised marriage to the dignity of a sacrament of the New Law, and He set upon its indissolubility the seal of His sanction, "What God hath joined together, let no man put asunder." This grafting of the natural properties of marriage—unity and indissolubility—upon a divine sacrament was the doctrine which Christ entrusted to His Church. To her He gave the office of preserving intact the natural and divine law in this matter and the authoritative promulgation of the same.

But it was one thing for the Church to set forth a doctrine in theory and quite another thing to carry it out in practice. And it would be impossible that the Church—"the knight-errant of the moral world,"—should have failed to break a lance through succeeding centuries for the integrity of the marriage bond. She was at once brought into conflict with existing civilization, and when public opinion, universal custom, depraved nature and its powerful passions rose up in their might against her, she had to guard and protect the unity and indissolubility of marriage. For nineteen centuries she has maintained the sacramental character of matrimony, its unity and indissolubility, in the face of Roman despotism, under crushing persecution, in the face of untamed barbarian conquerors, amid the ruin of civil institutions, the license and anarchy of violent change. And in our own age, before a spirit of self-will, which assumes the guise of liberty and sweeps over modern nations as the flame over the prairie, the Church still maintains the self-same law of marriage as the last rampart of the family and

---

* Deut. XXIV., lssq. Matt. V., 31; XIX., 7; Mark X., 4.

of society against their invaders. Marriage in the mind of the Church is, as it ever was, the most inviolable and irrevocable of all contracts. Every human contract may be lawfully dissolved, but, by the law of God, the bond uniting husband and wife can be broken only by death. The sword of earthly justice cannot sever the nuptial knot which the Lord has tied, for, "What God hath joined together let no man put asunder."

For her own subjects the Catholic Church has a full code of law on marriage and divorce. But like any other code of law which amounts to anything, it is not thoroughly understood by any except those who study it professionally. Summarily, her law may be stated as follows:—

(a). A valid Christian marriage, (i. e. of baptized persons) not consummated, (ratum et non consummatum) may be dissolved by the spiritual death of one of the parties who takes the solemn vows of a religious order*; or by dispensation from the Pope.

(b). A marriage between unbelievers (i. e. unbaptized persons) becomes dissolved if one of the parties becomes a Catholic and contracts a valid Christian marriage, provided, however, that the unconverted unbelieving spouse will not continue the marriage relation with the other, or will not continue it amicably (pacifice); without reviling the Creator (sine contumelia Creatoris); or without the spiritual disadvantage of the converted and believing spouse (damno spirituali fidelis).

(c). Separation—a mensa et toro—either perpetual or temporal (equivalent to a limited divorce as allowed in American law) is permitted in the case of a valid and consummated Christian marriage for most of the causes for which, in civil legislation, absolute divorce, i. e., divorce a vinculo matrimonii, is granted.

(d). The Catholic Church denies all power to any tribunal, secular or ecclesiastical, to grant divorce "a vinculo matrimonii," for any cause whatsoever, in the case of marriage validly contracted and consummated (ratum et consummatum) according to the institution of Christ. It is,

* Council of Trent, sess. XXIV., can. 6.

therefore, one of the cardinal doctrines of the Catholic Church that the marriage of Christians, i. e., of baptized persons, validly ratified and consummated is absolutely indissoluble. Consequently, there can be no legal and valid divorce a vinculo of the parties to such a marriage. Divorce in the modern sense, i. e., a vinculo matrimonii, has no place in Catholic doctrine or practice.

Moreover, this Church proclaims and establishes a considerable number of impediments invalidating marriage, which impediments may, for the most part, be removed either in general or in the particular case by the supreme authority in the Church; and this power is often delegated more or less entirely to bishops and other subordinates, and thus no difficulty need beset any conscientious Catholic contemplating matrimony. Occasionally he may have to consult a clergyman beforehand with regard to this or that impediment, as any man of sense would consult a lawyer before taking an important step of which he did not fully know the legal bearing.*

This condition of affairs prevailed for many centuries, and so long as the Church was permitted to exercise full control of matters relating to marriage all moved smoothly on; for although abuses appeared at times, they were known to be such and opposed. However, a lamentable change was ushered in by the dawn of the Reformation. At that time the sacramental character of marriage was rudely assailed and persistently denied. It was sought to degrade matrimony to a mere civil contract, and to place it under the sole guardianship of the State. In all Protestant countries and communions this attempt succeeded. And it is to the eternal infamy of the memory of the founder of the Reformation, Martin Luther, and of his associates, that they laid the foundations of, and made possible, the present detestable system of divorce by deliberately sanctioning the open bigamy of the Landgrave of Hesse who appealed to them, as expositors of the law of Christ, for permission to have two wives.**

* S. Thom. Supp. q. 61-67; Sanchez, l. II., disp. 18-23; VII., disp. 74; X., disp. 1; Carriere, n. 213 sq., 228 sq., 302 sq; Perrone, l. II., sect. 1, c. 7, a. 2; l. III., sect. 2, c. 1-4; c. 6, a. 1; De Augustinis, a. 8; th. 10. Palmieri, th. 16-27.

** "History of the Reformation," vol. 1, Spalding.

Now of the numerous religious denominations which have evolved from the Reformation, or come into being since that time, and which exist in our country today, and of their doctrinal tenets concerning marriage and divorce, it is, to some extent, due the Protestant Episcopal Church to state that no other Protestant communion in this country has stood more firmly for the stricter view of marriage and divorce. The doctrine and law of this Church on the subject of divorce is contained in Canon 13, title II. of the "Digest of Canons" of 1887. Nowhere has this Church defined marriage. Negatively it is affirmed (art. XXV.) that "matrimony is not to be counted for a sacrament of the Gospel." This seems to reduce marriage to a civil contract, and accordingly the first rubric in the "Form of Solemnization of Matrimony" directs, on the ground of differences of law in the various States, that, "the minister is left to the directions of those laws in everything that regards the civil contract, between the parties." Laws determining what persons shall be capable of contracting marriage would seem to be included in "everything that regards the civil contract," and, as a matter of fact, the Protestant Episcopal Church has never, by canon or express legislation, published a code of impediments. The present canon of this Church allows the complete validity of divorce a vinculo in the case of adultery, and the right of re-marriage to the innocent party. But the Church has not determined in what manner either the grounds of the divorce, or the "innocence" of either party is to be ascertained.

The law of this Church is by no means identical with the opinion of either the entire clergy or the laity. Many Episcopalians are of the opinion that in the authoritative teaching of their Church the existing law is far too lax, or, at least, the whole doctrine of marriage is too inadequately dealt with. This sentiment has been active for several years, among the High Church party more particularly, and it showed itself to be so powerful at a General Conference held in Washington, October, 1898, that its efforts for reform in this matter were defeated by only a small majority.

At that Conference the whole subject of marriage and divorce received much attention. A committee of twelve was appointed for the purpose of taking the matter under more special consideration and of making such recommendations to the next General Conference as would seem to be warranted. This committe met the following year. It failed, however, to reach any definite agreement relative to a change in the existing canon. On November 14, 1900, this committee assembled a second time and definite changes were agreed upon. By a canon, unanimously adopted by this committee, re-marriage of divorced persons by clergymen of the Protestant Episcopal Church was absolutely forbidden. Ministers of this Church were positively forbidden to unite in matrimony either the guilty or innocent party to a divorce while the former husband or wife lives. This canon, however, did not declare the marriage of such innocent parties, if contracted under civil sanction, to be unlawful, and it did not declare the parties thereto to be subjected to any discipline for this cause. The canon prescribed that it is hereby enacted that, "No minister shall solemnize a marriage between any two persons unless, nor until, by inquiry, he shall have satisfied himself that neither person has been, nor is, the husband or wife of any other living; unless the former marriage was annulled, by a decree of some civil court of competent jurisdiction, for cause existing before such former marriage." (Canon 2, sect. IV.) In another canon, adopted without a dissenting voice, a divorced person who re-marries during the lifetime of the former husband or wife was excluded from the sacraments, except when at the point of death, or when penitent and separated from the person whom the husband or wife subsequently married. This canon, however, applied only to the offending party to a divorce, practically tending to excommunicate him or her so far as church membership goes; it did not apply to the innocent party when a divorce is obtained for the cause of adultery.*

---

* "Literary Digest," Dec. 15, 1900, p. 738.

These canons indicate a reaction in the "public opinion" of the Episcopalian body against the freedom of divorce. The unanimous action of the committee was wholesome and inspiring, and was a step in the right direction, if taken somewhat late in the day. Were the canons adopted by the General Conference it would be, perhaps, as far as the Episcopal Church will ever go in this matter until it is ready to join with the Catholic Church in definitively holding marriage to be a sacrament and indissoluble. And, as a matter of fact, the sentiment in favor of the stricter view of marriage and divorce has become so pronounced among so many of the communicants of this Church that the advisability of forbidding divorce altogether is a matter which will come up for discussion before the House of Bishops at the General Conference to be held in Boston this year.

For the other Protestant sects of our country, suffice it to state that they have never professed the doctrine of the indissolubility of marriage. All permit divorce for adultery, and likewise sanction it for other causes. But the inter-church conference above referred to, while not limiting the causes of divorce, seems destined to be productive of some good results. The General Assembly of the Presbyterian Church of the United States held at Buffalo, N. Y., May, 1904, by a two-thirds vote, passed the following resolution: "Recognizing the comity which should exist between the denominations of the inter-church conference, and believing that it would be desirable and tend to the increase of a spirit of Christian unity, we earnestly advise all the ministers under the care and authority of this General Assembly to refuse to unite in marriage any person or persons whose marriage such ministers have good reason to believe is forbidden by the laws of the Church in which such person or persons seeking to be married may hold membership." Similar resolutions are anticipated on the part of the other churches interested in this movement against divorce.

There is, however, in the United States, one religious body whose singular doctrine has, of late, attracted much attention because of revelations made at the inquiry, by a

Committee of the United States Senate to determine the right of the Hon. Reed Smoot, Senator-elect from Utah, to retain his seat in that body.

The Mormon Church, or "The Church of Jesus Christ of Latter-Day Saints" was organized in New York in 1830, but soon transferred to Ohio, and thence to Illinois. Later, its adherents, under Brigham Young, emigrated to Utah, and, in 1847, established the seat of the Church at Salt Lake City, where it remains today. This sect recognizes two kinds of marriage, namely, temporal and spiritual; the former joining the parties thereto for this world, the latter "sealing" them for eternity; in the former instance death effects a divorce, in the latter only a temporary separation. However, it is plural marriage which is the one great question, the one article of the Mormon faith beside which in Christian eyes all its other tenets have been minor, and it is the dogma which has evoked the sharpest criticism of this Church. Until recently, two views regarding plural marriage were in vogue, the one very positively asserting it to be obligatory, the other contending it to be only permissive. Its sanction is derived from the so-called revelations made to Joseph Smith, a famous Mormon elder, and also from the Mormon system of theology. "'Increase and multiply' is the supreme law of God, since in its exercise His kingdom is enlarged and more beings become like Him. Giving birth to children hastens the work . . . who helps most in this does best. It is physically impossible to rear many children with one wife. To him therefore whom God knows as a superior man who would train children well, He reveals the privilege of taking more than one wife, and honors him by giving him a larger share in the great work. Not all, but a chosen number are destined for polygamists. Such are the practical deductions from Mormon theology. Under the system which it creates marriage is made a duty, but polygamy becomes a virtue."*

---

* "Marriage and Divorce."—Wright, pp. 72, 123–125. Cf. also "Book of Mormon"; "Doctrine and Covenants of the Church of Jesus Christ of Latter-Day Saints," p. 463 seq.; "The Vitality of Mormonism," by Ray Stannard Baker, in the Century Magazine, June, 1904.

As the Mormon Chruch recognizes two kinds of marriage, so it likewise acknowledges two kinds of divorce: the one separative for this life, the other operative in the world to come. When divorce is sought in the case of first wives and husbands the civil courts are utilized; but in the case of plural wives, who have no legal status in such courts, the appeal is to the power which united them, namely, to the Church. The jurisdiction of the civil court extends to this life only, and parties divorced in this court must also obtain a decree from ecclesiastical authority if they desire to live apart in the life to come. Ecclesiastical divorces, either for time or eternity, or both, may be obtained for the following causes:—murder, adultery, infanticide, foeticide, incompatibility of temper rendering it impossible to live together in harmony. A woman may obtain a divorce also for cruel treatment, refusal or neglect to support her and her children, etc. The divorce is granted by the President—the supreme authority—of the Church upon the application of one or both of the interested parties, and upon the recommendation of the bishop of the ward wherein they reside.

Today, polygamous or plural marriages are forbidden under heavy penalties by the Constitution and statutory law of Utah. But, "law no more stifled polygamy, short off, in Utah, than law suddenly cured the drink habit in Maine," for, while there may be some question as to whether or not such marriages have been entered into since this prohibition was enjoined, the Smoot inquiry has made it evident that in violation of the statutes and with the apparent sanction of the ecclesiastical body, some members of the Mormon Church—the President and other officers included—practived polygamous living. Polygamy still exists. "There are still Mormons," as a citizen of Salt Lake City graphically put it, "who can take a car going any direction and get home." However, it seems fair to state that henceforth this Church intends co-operating with the enactments of the statutory law in this matter. A notable feature of the Seventy-Fourth Annual Conference of the Mormon Church held in Salt Lake City in April of this year was the official declaration of President Joseph Smith on the subject of plural

marriage. "All such marriages are prohibited, and if any officer or member of the Church shall assume to solemnize or enter into any such marriage he will be deemed in transgression against the Church, and will be liable to be dealt with according to the rules and regulations thereof and excommunicated therefrom."

Summarily, therefore, with reference to the numerous religious denominations in our country it may be said that whatever may be their authoritative doctrinal tenets in this matter of marriage and divorce, with the sole exception of the Catholic Church, they all conform in practice, to a greater or a lesser extent, to the enactments of the civil law. This is but natural, for the absence of any real authoritative religious teaching on the subject and the principle of private judgment, introduced at the Reformation, logically force Protestants, in this matter, to the only tribunal left them—that of the State.

But marriage is regulated by the common law. And our common law is a heritage of the past. It has descended from nation to nation in the course of modern jurisprudence. To Europe, then to America, it came as an inheritance from the Roman law, through the mediaeval church or canon law, with certain modifications resulting from the practice of it in the different colonies.* The earliest colonists who settled New England brought with them views of marriage and divorce which prevailed among their reformed brethren, and in the Reformed Churches generally, of the Old World. It was part of their belief that in the New Testament adultery and desertion were recognized as the only sufficient grounds for the dissolution of marriage. In the course of years the descendants of these first settlers, and the respective States which they peopled, passed from the strict observance of what was regarded as Scriptural grounds for divorce into the loose practices of the Protestant States on the European continent in the eighteenth century.**

---

* Kent, "Commentaries," 2 ed., vol. II., p. 88.

** "Divorce and Divorce Legislation." — Woolsey.

The first enlargement of causes for divorce came after the Revolution, when the States had become independent. Limited divorce, i. e., divorce "a mensa et toro," which was unknown in earlier colonial legislation, came to be granted on account of extreme cruelty by a statute of Massachusetts, in 1786, and again in 1810, to a wife utterly deserted, or for whose support the husband refused or failed to provide. In 1860, gross and confirmed habits of intoxication, with cruel and abusive treatment, became new causes for this kind of severance of the marriage tie. In 1870, a statute was passed abolishing divorce from bed and board, and since that date such divorces have not been allowed by any new statute. In Rhode Island, a divorce from bed and board—until reconciliation—came to be granted for any cause for which absolute divorce was decreed, and for such other causes as might seem to require it. This is the present law in that State. In Connecticut, limited divorce could be granted, in 1843, for habitual intemperance and intolerable cruelty. Today there is no limited divorce in this State. New York, to some extent, followed England or English sentiment in its divorce legislation. An act of the Legislature, in 1787, authorized divorce "a vinculo matrimonii" for adultery only; separation or limited divorce being granted for other causes. New Jersey came to grant divorce, for a time or permanently, on the ground of cruelty. Delaware empowered the courts having cognizance of divorce to decree separation at their discretion in several cases. Louisiana seems to have followed to some extent, the French law of post-Revolutionary times. The Civil Code of that State declares that "the law considers marriage in no other light than as a civil contract," meaning by this that it has nothing to do with the religious aspects of the institution. Absolute divorce came to be granted only for adultery, which, in the husband's case, was understood as keeping a concubine in the common house or publicly elsewhere. Limited divorce was, and is, decreed for many causes. South Carolina is the one State in the Union which knows not divorce. In 1868, a statute was enacted to the effect that "Divorces from the bond of matrimony shall not be allowed

but by the judgment of a court, as shall be prescribed by law." An act, approved Jan. 31, 1872, made legal divorces on the ground of adultery or willful desertion in either party; but by an act, approved in 1878, it was provided that "all acts and parts of acts relating to the subject of granting divorce be, and the same are, hereby repealed." The power to pass such laws at some future time still remains under the new Constitution. The newer States of the West and Northwest seem to have adopted, in a great measure, the existing laws of the older—and especially of the New England—States, as may be judged from the tendency to multiply causes for divorce.

Correspondingly with the gradual growth of statute enactments relative to causes for divorce came a development in the method of granting the decree. It appears that at first divorces were generally, if not exclusively, granted only by an act of the respective colonial legislatures. Many of the States, in fact, nearly all the older ones, for a long time adhered to this method of dissolving the marriage bond. This was in accordance with the practice then, and until quite recently, in vogue in England. Of New York, in this connection, Chancellor Kent writes: "For many years after New York became an independent State there was not any lawful mode of dissolving a marriage in the lifetime of a person but by a special act of the legislature."* This was, in all probability, the custom of the great majority, at least, of the other States in the early days.** However, as the States developed, and new, more pressing, and seemingly more important duties became incumbent on the Legislatures of the various States, the matter of divorce was relegated to the courts in whose jurisdiction it now is. By an act of Congress, approved July 30, 1886, the Legislatures of the territories of the United States are prohibited from passing any special laws granting divorce, and a similar prohibition with regard to the granting of divorce by the Legislature itself is now contained in the constitutions

* Woolsey, "Divorce and Divorce Legislation," p. 204.

** Bishop, "Marriage, Divorce and Separation," vol. I., Nos. 1422-1471.

of all the States except Alabama, Connecticut, Delaware, Georgia, Kansas, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. Tennessee in the Constitution of 1834, was, perhaps, the first State to prohibit legislative divorce. This prohibition was renewed in the Constitution of 1870. In the Constitution of Mississippi, framed in 1868, a similar restriction is found. Pennsylvania, in the Constitution of 1873, expressly forbids the Legislature to pass any local or special law "for granting divorce." In the New England States and the other States in whose constitutions there is no such restriction of legislative power, the granting of divorce by special legislative act is now hardly known. In Massachusetts, a law of 1792 transferred divorce to the courts. No special law has been enacted since then, and Mr. Bishop remarks that "a legislative divorce would not now be sustained by the courts."* This, too, is the opinion of Carroll D. Wright. Of Massachusetts and New Hampshire he writes: "In both States jurisdiction has been vested by the Legislature in the courts, and hence legislative divorces cannot be granted therein."** In Connecticut, the Legislature still has power—petitions being presented to it up to 1878—to vote divorce in special cases, v. g., in cases not provided for by existing law, though the business is ordinarily transacted by the courts. In Maine, in 1876, an amendment to the Constitution authorized the Legislature "from time to time, to provide as far as practicable, by general laws, for all matters usually appertaining to special or private legislation." Divorce coming, as it does, under this head, the Maine Legislature retains the right to grant it. So in general it may be said that in all the States legislative divorces are, in effect, prohibited, and the granting of divorce by the courts is provided for and regulated by the statutes of all the States except, of course, South Carolina where divorce is unknown.*** And this brings us at once to a consideration of the legislative peculiarities of our divorce system which constitute what has been termed "The Conflict of Laws."

* "Marriage, Divorce, and Separation,' vol. II., No. 1456.

** "Marriage and Divorce," p. 79.

*** "Marriage, Divorce, and Separation," vol. II., Nos. 1472-1492.

In his report on "Marriage and Divorce in the United States," Col. Wright has enumerated forty-two causes for which absolute divorce is granted in the various States and Territories of our Union.* It may be observed here that a number of the causes which he has specified are grounds on which a marriage is, by law, declared null and void, and such an adjudication is in no strict sense divorce, although the statutes of many States so term it. Therefore, it would seem that the number of causes for which divorce in a strict sense is granted could be materially reduced.** However, these causes are numerous enough. They range from the alleged Scriptural ground of adultery down through the dismal gamut of cruelty, drunkenness, desertion and conviction of felony to that butt of the humorist, "incompatibility of temper." The various States differ, too, with regard to the number of causes which they admit as justifying divorce. For instance, New York admits but one ground; Maryland allows divorce for five causes, Massachusetts, for nine; Kentucky and Washington, for eleven.

Moreover, with regard to the same statutory ground, striking differences are manifest in the various States. We will consider several of the more generally acknowledged statutory causes. Adultery is the one cause which is most general throughout the country, and the cause which is most seriously advocated as being admitted in Sacred Scripture. Yet with regard to it surprising differences exist in the various State statutes. In some of our States, v. g., New York, Massachusetts, Michigan, and most of the others, a single act of adultery—admitted or proved—by either party is sufficient ground for divorce. In other States, v. g. in Kentucky and North Carolina, while this is sufficient cause for divorce in favor of the husband, it is not such for the wife; her husband must be found actually "living in adultery" with his paramour. Kentucky, too, allows divorce to the husband for "lewd and lascivious behavior" on the part of the wife without actual proof of an act of adultery, but declines to extend this right to the wife. In justifica-

* "Marriage and Divorce," p. 113.

** "The Divorce Problem: A Study in Statistics." — W. F. Wilcox, p. 42.

tion of this enactment it has been asserted that the consequences of such conduct by the woman may be more serious in the eyes of the law than in the man's case, but this is hardly true in the eyes of the moralist.

Conviction and imprisonment for crime is another well established ground for divorce—being admitted in all but a few States and the District of Columbia—yet the same want of uniformity regarding its interpretation exists. In some States, v. g. Arizona, Delaware, Indiana, Iowa, Minnesota, and Mississippi, divorce is not granted for any crime unless the conviction is subsequent to the marriage; in others no such restriction exists, as is the case in Arkansas, California, and Colorado. In North Carolina and Louisiana, a wife may obtain a divorce if her husband has been simply indicted for an infamous crime, even though he may never be arrested, brought to trial and convicted of the offence of which he is charged. In many more States, v. g. Arkansas, California, Colorado, Delaware, Idaho, Illinois, Indiana, Iowa, Missouri, Montana, Nevada, Oregon, Tennessee, Utah, Virginia, a conviction is absolutely necessary. In many, too, the conviction must have been followed by actual imprisonment, as is the case in Alabama, Arizona, Connecticut, Georgia, Kansas, Massachusetts, Michigan, Minnesota, New Hampshire, Pennsylvania, Texas, Vermont, Washington, Wisconsin and Wyoming. Moreover, the place of confinement and the term of imprisonment vary in the different States. For instance, it requires nearly twice as long an imprisonment in Massachusetts (five years) as in the adjoining State of Vermont (three years) to authorize a divorce. In Michigan, Wisconsin and Maine, sentence to imprisonment for life, and confinement under it, renders the marriage absolutely dissolved without any decree of divorce or other legal process. In New York, a subsequent marriage is permitted to one whose former husband or wife has been sentenced to imprisonment for life. In this State, and several others, viz., Arizona, Minnesota, Michigan, Nebraska, Massachusetts, Vermont, Virginia, Delaware, and Wyoming, the statutes provide that no pardon granted, after a divorce for imprisonment is obtained, shall be deemed to restore the party to his or her previous conjugal rights.

In Arizona, Indiana, Washington, and Wisconsin, "any cruel treatment" entitles a wife to a divorce; in Massachusetts, "any cruel or abusive treatment." In California, Colorado, Delaware, Florida, Idaho, Kansas, Maine, Montana, Nebraska, Nevada, New Hampshire, Ohio, Rhode Island, and Wyoming, it must be "extreme cruelty," which Illinois requires to be "repeated." In Alabama, Arkansas, Iowa, and Missouri, the cruelty must be such as to "endanger life;" in New Hampshire and Delaware, such as "to endanger health or reason;" in Pennsylvania, such as "to render living longer together absolutely insupportable." In Pennsylvania, and a few other States, the wife alone can sue for divorce on the ground of alleged cruelty; but most States concede this right, also, to the husband. In New Hampshire, cruelty must exist at the very time the petition is filed. In most of the States it suffices that either has been, at any time since the marriage, guilty of cruelty towards the other party. In Kentucky, it is necessary that such treatment shall have continued for at least six months.

Desertion is another common cause for divorce, and more decrees are granted for this than for any other one cause. It invites "collusion," and leaves no such stigma as does "adultery," or "cruelty." But with regard to it the language of the various State statutes is confusing. In one State it is simple "abandonment," in others "utter desertion," or "wilful desertion," or "wilful, continued, and obstinate," or "wilful and malicious." In some States, v. g. Louisiana and Rhode Island, desertion must have continued for five years to enable the aggrieved party to sue for divorce, though the court may in the latter State, issue a decree for desertion of a shorter period. Three years' absence is required in Connecticut, Delaware, Georgia, Maine, Massachusetts, Maryland, New Hampshire, Ohio, Texas, Vermont, Virginia, and West Virginia two years, in Alabama, Illinois, Indiana, Iowa, Michigan, Mississippi, Nebraska, New Jersey, North Carolina, Pennsylvania and Tennessee; while in Arkansas, California, Colorado, Florida, Idaho, Kansas, Kentucky, Minnesota, Missouri, Montana, Nevada, North Dakota, Oklahoma, Oregon, South Dakota,

Utah, Washington, Wisconsin, and Wyoming, one year is all that is required by law; and Arizona enjoys the distinction of granting divorce on the ground of desertion if either party has been absent six months. Pennsylvania differs from the adjoining States of Maryland, Ohio, Delaware, and West Virginia; Kentucky, from Tennessee; Georgia from North Carolina and Florida, etc. In Connecticut and Vermont, mere "disappearance" of the husband, for seven years, without having been heard from is sufficient; in New Hampshire and Ohio an absence of three years without having been heard from suffices, while in Colorado and Montana the accused party must be proven to have "left the State without intention of returning." Other variations, too, exist with regard to this cause for divorce, but we need not dwell on them.

It would seem that so simple an offense as drunkenness would not admit of much variety or diversity of application. In all States and Territories, except Illinois, Maryland, New Jersey, New York, South Carolina, Texas, Vermont, and Virginia, it is a sufficient cause for divorce. In California, it is "habitual intemperance," such as disqualifies the person a great portion of the time from properly attending to business, or such as would reasonably imply a source of great mental anguish to the innocent party. In Nevada and Kentucky, the habit must be "so great as to incapacitate the party from contributing his or her share to the support of the family." In Louisiana, it must be of such a nature as to render the living together of man and wife insupportable. In many States the wife is entitled to a divorce if her husband has contracted "gross and confirmed habits of intoxication." But even this, simple as it may seem, is attended with not a few variations, especially as regards duration. In New Hampshire and Ohio, it must have existed three years; in Illinois, Colorado, and Oregon, two years; in most States only one year, while in Georgia and a few others the statutes read "for such time as the jury in its discretion may deem sufficient." Moreover, what is understood by "gross and confirmed habits of intoxication," or how often one must be drunk to constitute "habit-

ual intemperance," is nowhere carefully defined, so the requirements of particular cases may vary as the character of the judges before whom the cases are brought.

Looking beyond the specific causes considered above, let us direct our attention to the vague and indefinite grounds for divorce contained in what is called "The Omnibus Clause" in our divorce laws. Formerly, in many of our States, the list of causes entitling one to a divorce ended with, "any other cause within the discretion of the court." The statute of Arizona once read: "When the case is within the reason of the law, within the general mischief the law is intended to remedy, or within what it may be presumed the legislators establishing the foregoing causes would have provided against had they foreseen the specific case." At present this "Omnibus Clause" has generally disappeared from our statute law, but not wholly, for a near equivalent still disfigures the statutes of a few States. In Florida, "the habitual indulgence of a violent and ungovernable temper" is ample ground for divorce. Kentucky, Missouri, Oregon, Wyoming, and Washington, will grant divorce for "indignities sufficient to render life burdensome," and the list of specific causes for which Washington will decree divorce concludes with, "For any other cause deemed by the court sufficient, if satisfied that they can no longer live together." What case could not be covered by this statute! Sad experience but emphasizes the opinion that the discretionary power of the courts, in this particular matter, does not always work to the best interests of the morality of the community at large.

Turning from the consideration of the great variety and diversity in the specified causes for divorce found in our law, if we examine the legal proceedings by which divorces are obtained, we find an equal, if not a greater, diversity. The first inquiry under this branch of the problem is as to the residence required in a State before one can sue for a divorce. In Massachusetts and Vermont, "No divorce shall be decreed (except under special circumstances in Massachusetts) for any cause, if the parties never lived together as husband and wife" in these States; "nor

for a cause which accrued in another State or country, unless the parties, before such cause accrued, lived together as husband and wife" in these States; "nor for a cause which accrued in another State or country, unless one of the parties lived in" these States. In many of our States no such restrictive cause exists; for instance, in Maine, there is no statutory requirement as to length of residence when the "parties were married in this State or cohabited there after marriage." And as to causes occurring out of the State in which suit for divorce is filed the most perplexing differences exist in the statutes of our States and Territories. In Massachusetts, Connecticut, and New Jersey, the petitioner must have resided three years next preceding the filing of the libel when both parties were residents, otherwise five years; in Florida, Indiana, Maryland, North Carolina, and Tennessee, two years. One year is the statutory requirement in all the other States, except Idaho, Nebraska, Nevada, and South Dakota, in which States only six months' residence is required.

In many States and Territories the statutes make provision as to the manner in which the defendant in a divorce suit shall be served with notice thereof, and reasonable care is taken that the notice is served on him or her. In other States the provisions on this point evidently admit of great abuse, it being left to the unsupported affidavit of one interested party, or to the mere statement of the applicant to determine the fact of the defendant's absence beyond the reach of the court. Notice by publication or mail, or both, is very frequently regarded as sufficient.

In the modes of proof, rules of trial, etc., hardly any two States can be said to entirely agree. However it is true that a large measure of uniformity in substance underlies the differences with regard to this point, and there is little evidence to prove that the variations in procedure have exerted a marked influence on the divorce rate of the country. As this aspect of the question would involve too much of the technicality of law, the plain statement of the fact is deemed sufficient for our purpose.

Again, the effect and consequences of a decree of absolute divorce vary according to the latitude and longitude of the place where it is obtained. In most of our States such a decree fully and completely dissolves the marriage contract as to both parties. In California and Louisiana, it places them in the same situation as if the marriage had never been performed. After an absolute divorce, either party may, in most States, marry again at any time, as in Connecticut, Pennsylvania, North Carolina, Kentucky, Tennessee, Texas, Oregon, and the same would follow where the law is silent. However, in some States certain limitations exist. The libellee (or either party in Minnesota and Kansas) cannot, in Mississippi, Maine, and Nebraska, marry until two years (in Missouri, five years; in Vermont, three years; in Kansas, six months) shall have elapsed from the issuance of the final decree; or, as in Missouri, sooner by special decree of the court. In New York, a party convicted of adultery and subsequently divorced on this ground cannot marry again at any time during the lifetime of the former partner, but the parties may remarry each other. In Maryland, Virginia, and Mississippi,—as to the person against whom a divorce has been granted for adultery, or in Maryland and Virginia for abandonment, the court may decree that he or she is not to marry again under the pains and penalties of adultery. Such a decree, however, may be, at any time afterwards, revoked or annulled in Virginia. In a few States, no husband nor wife divorced for his or her adultery, can marry the "particeps criminis" during the lifetime of former husband or wife, as is the case in Pennsylvania, Delaware, and Tennessee; nor at any time, as is the case in Louisiana, where such marriage renders the divorced party thereto guilty of bigamy. But in many States no such statute exists relative to this case, and, therefore, the defendant guilty of adultery may be married at any time, even to the "particeps criminis." In Georgia and Alabama, the whole matter of rights and disabilities of marriage after divorce is left to the discretion of the jury or court granting divorce. And as a matter of fact, the statutory provisions of all these States framed for the

laudable purpose of preventing the guilty party from marrying again are utterly futile because they do not operate outside the limits of these respective States. In many another State the party affected by these statutory limitations can be lawfully married, and a marriage good and valid where it is celebrated is, by universal and necessary rule, good and valid everywhere. Such a statutory restriction, therefore, imposes on the affected party only the inconvenience of going into another State to enter into his or her second marriage. This fact was made very patent a few years ago by a "tramp marriage" of two members of New York's exclusive set,—the woman being divorced in New York, and married again a few hours later in Connecticut.

Therefore, it may, it must be said that the result of the varied legislation and the loose administration of the divorce laws of our States is that, far from protecting the rights of our citizens and of the marital union, these very laws invite, as it were, the very evils which they claim to repress and punish. Ostensibly the causes for divorce are limited, and theoretically this should curtail the number of divorces granted, but practically—given the desire for divorce and the requisite money for counsel fees—the coveted release from the marriage tie is almost certain. If the statutory enactments of one State prohibit the granting of the decree, a temporary removal to another jurisdiction is all that is necessary to secure it. There the dissolution of the marriage contract can be effected for causes and upon notice and testimony which would be insufficient in the State of actual residence. The number of divorces continues to increase, many of which, legally valid in the jurisdiction where they were obtained, would be declared fraudulent and void in other States, and marriages by the divided parties, held to be legal in the State where they were entered into, would be considered bigamous in other places. If it is the husband who secures the divorce and remarries, the personal status of two women and the property rights of two families are involved. The first wife is still the lawful wife, entitled to all the rights and privileges of a wife, in the State in which the first marriage was con-

tracted, and probably in many others, except the one in which the fraudulent divorce was obtained. The second wife is entitled to dower in the real estate of her husband under the law of the State in which her marriage took place, and the children of that marriage are legitimate in that State, but elsewhere they may be illegitimate, and their mother entitled to no dower.

Should things be as they are? Should a slight variation in latitude and longitude present such conflicting rights and obligations in the same marital relation? Is there, in the nature of things, a reason why the invisible line between adjoining States and Territories should give rise to such visible and marked contrasts in the statutory law of each under exactly the same fact and circumstance? Is it consistent that, in the same country, the law of one place should be such as to subject one woman to a life of continued and inevitable hardship, when another woman, a few miles distant, is legally entitled to complete and permanent relief? If, in the opinion of the citizens, it is to the best interests of one State not to permit divorce for any other cause than the alleged Scriptural ground, is it advisable and conducive to sound morality to recognize any other reason as sufficient just across the border line? And if in one State other injuries to a wife besides marital infidelity are considered sufficient reasons for the dissolution of the marriage bond, does not consistency demand that this view of things be taken elsewhere in a country throughout the length and breadth of which the conditions of life are practically the same? It has well been said that, "Without at all underrating the moral guilt of adultery, and whatever views may be taken of it by those whose conceptions of personal purity are most exalted, it is not easy to see how in its legal character and effect it is a greater crime against a wife that her husband should have committed an act of infidelity, than that he should have made an assault upon her with intent to murder, or should have rendered her life intolerable by a long series of brutal cruelties or by excessive and incurable intemperance, or without excuse should have deliberately deserted her, or brought about the same result

by the commission of some felony that consigned him to a prison for a term of years." Should we have, then, on this vital subject of divorce, one law in New York and another in Chicago; one rule in Boston and another in San Francisco? Certainly not. Uniformity is desirable, and it has been urged for many years.

Can uniformity be obtained in this matter? What steps are necessary to procure a practical measure of reform? This is the important question. Opinions are, and will be, divided concerning the other questions on the subject. Divorces will continue to be granted. At present we have forty odd States and Territories. We are over seventy millions of people; stretched three thousand miles from ocean to ocean, dwelling on sea-coast, plain and mountain; men and women of diverse nations and races, with diverse customs, holding diverse religions, and varying shades of opinion on all social questions. The sentiment of the people of the different States is, and in the nature of things will continue to be, diverse upon the subject of divorce, thereby making it inevitable that there shall be a corresponding diversity of laws concerning it. Divorce legislation has come in response to a decided public sentiment in its favor. It has not been brought about by vicious or necessarily irreligious people. Nor was it instituted by those who believe in yielding to an evil if you cannot correct it, but rather by sincere and thoughtful legislators who were, it can hardly be doubted, honest in their convictions that in compelling ill-mated couples to remain united society was perpetrating upon itself an evil vastly more serious in its consequences than that which might come from the enactment of divorce laws. However much we may deplore the weakening of the family tie—that seems to be a feature of our modern civilization—the causes will be found, to a great extent, in the changed and changing religious, social, economic, and industrial conditions of our people, and not so much in the divorce laws which follow, but do not create, the demand for them. At the present time a great majority of the thinking people of the country recognize the disastrous consequences of our lax divorce laws and their care-

less administration. At the same time they are alive to the necessity of reform in the matter, which necessity is patent from the want of uniformity in the laws of the several States prescribing causes for divorce, concerning the residence, in the respective States, of the parties to a divorce suit, the notice to be served on the defendant, and also from the want of uniformity in the force and effect of a judicial decree dissolving the marriage contract. But how can uniformity of divorce legislation, and consequently reform in this matter, be obtained? Two methods are advocated: either by State or by National legislation.

There are present forty odd law-making powers continually in action within the United States; some of them, in the newer States, called upon to frame new codes on the basis of older ones, and all more or less busy at readjusting the old laws to a somewhat altered condition of society, trying experiments in legislation, or correcting the errors of earlier legislation. As a consequence, there is a wearisome amount of laws on divorce existing at any one time. At present, as in the past, each State prescribes the qualifications of the parties to the marriage contract, the manner in which it shall be solemnized and authenticated, the causes for which it may be set aside or annulled, and the effect of the dissolution upon the personal status and property rights of the parties and of their children. Now the movement to obtain uniformity in divorce legislation throughout the country by State law advocates the following:—"Let one State, like New York, take an advanced scientific position. Let it formulate a scientific, harmonious, homogeneous system of marriage and divorce law; and . . then, by convention or otherwise" influence the other States to adopt a similar system. And thus have "the Legislatures of the various States act together and co-operate in this matter."*

When Mr. Hill was Governor of New York, a commission was appointed to act in accordance with this movement, and later a Conference of Commissioners, appointed by the various States—to the number of thirty odd at the

* Judge Barret, "New York Daily Tribune," Nov. 25, 1883.

present writing—has been organized for the purpose of affecting legislation in this matter. Some progress toward securing uniformity has been made by the action of these State Boards of Commissioners. At least, some uniformity of public sentiment has been secured. One step at a time is a good motto in all legal reform, and this securing of a uniform public opinion is, perhaps, in the light of our present divorce legislation, the first step to be taken. Yet when one considers that there are now over forty distinct and sovereign States, each with its own system of divorce laws and procedure; its own usages, customs, and traditions; its own views of the sacredness or laxity of the marriage relation; its natural attachment to its historic legislation, it is easy to conceive how difficult it is to confidently expect uniformity through the action of the many State Legislatures. The efforts of "The American Bar Association," too, illustrate the case. This association was formed in 1878, and is composed of the leading members of the bar and of legislators from all over the country. One of its leading objects is, by the interchange of thought and opinion, to secure uniformity of legislation in business matters, such as commercial law, the law of land titles, and the like, by separate legislative action in each State. However, notwithstanding the earnest efforts of so many influential men in so many quarters, but little progress has been made in this direction. So it would seem that there is not much to encourage the hope of uniform divorce legislation by any such means. In a movement of this nature there is wanting an acknowledged standard to which to appeal. In the nature of things, each State is reluctant to retrace its steps, or to abandon its long established code. Yet, to thave this movement effective, there must be concession and compromise; the various State systems must, as it were, be fused together and a new system cast from the mass. The manifold difficulties attending this process are manifest. Uniformity by separate legislative action can be brought about only by many years of persistent and arduous labor.

A most important measure of reform, or, at least, a momentous step in that direction, and one strongly advocated

today, is the entrusting of the entire matter to the one controlling power of the National Congress. That body now has the right to enact laws regulating marriage and divorce for the District of Columbia and for the various Territories. Extend this power over the remaining portion of the country, and the first step is gained, so it is affirmed; and moreover, the advocates of this movement assert, there is nothing in the structure of our government to prevent this power being conferred on the Federal authority. True, this would necessitate an amendment to the Federal Constitution, and the securing of such an amendment may prove impracticable. That it is beset with many difficulties is conceded; but, it is maintained, these are not so great as has been imagined, nor are they so unconquerable as those necessarily encountered in the plan for securing uniform legislation through the co-operation of the individual States. Those who advocate this method of reform in divorce legislation contend that the controversy as to which shall legislate on the subject—the State or the Federal Government—reduces itself to a mere question of public convenience and welfare. Therefore, let it be clearly shown that Congress can best legislate on the subject, and in a manner conducive to the best interests of the nation at large, and then the people can be trusted to demand that their representatives authorize it.

The objections to the amendment have been more or less magnified. To the objection that if Congress is empowered to legislate on matters pertaining to marriage and divorce "it will eventually absorb all powers incidental to the subject," it is answered that "Congress could exercise only such express powers as were granted by the amendment—the powers necessarily implied in the express grant." It is true that the United States' courts would have jurisdiction to enforce the laws which Congress might enact under such an amendment. That jurisdiction, however, would extend only to cases brought under these laws, and to cases in which some question arising under them is involved. Such an amendment would not necessarily confer upon Congress or the United States courts jurisdiction over the other

relations of "husband and wife;" over the relations of "parent and child;" of "dower and courtesy," etc. Jurisdiction on these matters could be left where it now is—with the States. Divorce might, also, be left to the State courts, if neither party chose to resort to the Federal tribunals.

But granted that such an amendment as proposed would involve the surrender by the States of jurisdiction in these matters, that, it is asserted, would not be an invincible argument against its adoption. The real point at issue is whether or not it would be better for the people of the United States, in order to secure uniformity in the laws regulating marriage and divorce, and in the personal status and property rights of divorced parties and their children, that the Federal authority should possess the additional power proposed by the amendment?

To take domestic relations from State control and make them Federal questions is, indeed, a momentous step. Those who admire paternal government, under any plausible name, may well favor the project as a long step towards centralization, for if Congress is given control of marriage and divorce it is hard to say what shall be refused it. However, though the vacillating policy of Congress in finance, tariff, and other matters, gives but little assurance of wise or even steady legislation in family affairs, as Federal legislation on marriage and divorce seems to be very much advocated today it is well that we should consider it at some length. So supposing a constitutional amendment made and the matter brought within the control of Congress, would the present difficulty, the present evil, be removed? Uniformity of law might be obtained, the present legal uncertainty of marital relations would be, to some extent, remedied, and, if the law is like that of the stricter States, much would be gained for the stability of the family. But would the increase of divorces be checked, or even appreciably affected? Would the general morality of the country be much better?

In legislating on the subject, Congress—if it did not adopt a "liberal" system of divorce, and of the deplorable results of which on the family and on society at large there can be no question—would most likely adopt one or more of

the following courses which are open to it, namely, restriction of marriage; restriction of divorce laws; restriction of re-marriage after divorce; or the institution of civil marriage and divorce.

Restriction of Marriage.—In all, or nearly all, of our States certain restrictions as to age, etc., exist at the present time. Now it is contended, "that many of the evils which spring up in married life might be prevented, the number of divorces decidedly lessened, and the deplorable consequences thereof in some measure avoided" if Congress could enact laws by which the age of lawful marriage would be raised to years of actual rather than assumed discretion, that lawful marriage could not be entered into under full age without the written consent of parent or guardian, and that the parties could be put under oath as to their age, antecedents, etc., and false swearing made perjury—and punishable as such.* In this connection, Dr. William C. Robinson—the present Dean of the Catholic University of America Law School—while a professor at Yale wrote:—"No person should be marriageable under the age of twenty-one, and a marriage celebrated between persons either of whom is under age should be ipso facto void."** At first sight it would seem that in a law of this nature would be found something of an effective remedy. If marriage could be contracted only by persons of a mature age, with sufficient means of support, etc., it would be but natural to expect a more stable condition of the marital relations. However, no direct connection between the age of marriage and the liability to divorce can be made out from statistics. Yet it may be said that communities in which early marriages are most common are comparatively most free from divorce. Prince Krapotkine tells us that in Russia, "the peasants, for the most part, marry their sons at eighteen and their daughters at sixteen," and the Russian peasantry are, perhaps, with the exception of the Irish, the least subject to divorce. Moreover, 4,490 husbands or wives

* For the moral worth of the physiological aspects of this question cf. Catholic University Bulletin, April, 1900; "The Restriction of Marriage," by John W. Melody.

** Journal of Social Science, (Am. Ass. XIV.) 1881, p. 136, "The Diagnostics of Divorce."

under twenty years of age were living in Massachusetts in 1902.* To this number must be added an indeterminable number of persons married between the age of twenty and twenty-one to ascertain the number of persons whose marriages would be declared void by such a law as Dr. Robinson proposes. Now how large a proportion of these 5,000 persons—a very conservative estimate of the number —would have remained virtuous and continent in the face of a law forbidding their marriage? It is difficult to say. The experience of certain countries, v. g. Bavaria, in which restrictions were placed upon marriage, may give us some idea of what might be expected here if such a law were in force. Where restrictions have been placed on marriage, "the number of marriages in a year decreased rapidly, but parallel with this decrease went a large increase in the number of illegitimate births." When the law was repealed and the restrictions were removed, the annual number of marriages increased and "simultaneously with this came a marked decrease in the number of illegitimate births." A consideration of the liability to immorality of this nature evidences the wisdom of the Catholic Church in permitting lawful wedlock to persons of the early age assigned in her Canon Law. So in the present condition of affairs in our country, "legal restrictions on marriage can hardly be deemed a satisfactory method of checking divorce. Restrictions on marriage reduce the number of marriages, and thus ultimately the number of divorces" . . . but, "the attendant evils (or, at least, their grave probability) are so great . . . as to make such restrictions unwise.**

Restriction of Divorce.—Laws and their administration affect divorce. This is axiomatic. In fact, the first impulse is to attribute the whole evil in our country to lax and easy divorce laws, and to a more careless administration of them. So the contention is that the enactment by Congress of a code of stringent divorce laws, with stricter methods of administration would alleviate, if not completely obliterate, the present sad condition of affairs.

---

* "Sixty-First Report of Births, Marriages and Deaths in Massachusetts."

** "The Divorce Problem. A Study in Statistics." — Wilcox, pp. 60–66.

It is true that were legal divorces less easy to obtain such frequent separations would not occur. It is also true that a stricter divorce law, v. g. one admitting fewer causes should reduce the number of divorces. But when one considers that divorce statutes are only the embodiment and outgrowth of the increasing popular demand for a more easy separation; that the laws only reflect public sentiment on the subject, what reasonable prospect is there to expect that Congress would enact any law on the subject which would differ materially from the State laws? What public opinion demands in the States may be expected from the representatives of the people of these States in Congress, for generally Congressmen are guided by the sentiments of their constituents.

However, suppose a code of stringent divorce laws was enacted and the causes of divorce were thereby limited, would this eradicate the evil? Would the stability of the marital union be assured? Would its inviolability be guaranteed?

Connecticut, in 1878, by repealing the law permitting divorce in that State for "any such misconduct as permanently destroys the happiness of the petitioner and defeats the purpose of the marriage relation," restricted her divorce code. However, the number of divorces for that year was 412, exactly the same as for the year before. The law immediately diminished the divorces for misconduct with or without causes by 99, but there are just 99 more for other causes, which would seem to show that it cannot be admitted that the decrease is sufficient to indicate the influence of the change of law. It may be urged, however, that Connecticut and some other States, which have repealed some of the laxer laws, have been content with half-hearted measures. South Carolina, alone, by prohibiting divorce altogether, has gone to the root of the matter.

It is probably true that many marry now with the thought in their hearts that if they do not find the union to their happiness, they may break it and marry again. But if divorce was stringently restricted, or entirely abolished, persons of common prudence would resign themselves to

the inevitable, and when they lie under the necessity of passing their lives together they would endeavor to forgive or overlook many frivolous quarrels and disgusts which, under the prospect of an easy separation, are frequently inflamed into the most deadly hatred. Therefore, such a law as we are considering would seem to be conducive to good results. However, setting aside as inadvisable and impracticable, in the present condition of things, the adoption by the other States of the South Carolina legislation—which has not tended to produce a very enviable morality in that State*—we may say that restrictions on divorce by enactment of stringent laws and limitations of causes for which divorce is granted exert but a slight influence on the divorce rate, for frequently a crime is committed for the very purpose of having a cause for divorce, and as long as any cause is admitted this is always possible. It cannot be gainsaid that such restrictions would have some salutary effects, but the effectiveness of such legislation would depend on the moral sentiment of the people, which, at present, does not seem to be such as would warrant the development of the good results naturally inherent in the legislation proposed.

One efficient means of restricting divorce by law is noted by Mr. Wilcox. It is to make the procuring of the decree expensive. The necessary evidence might be readily furnished, but the requisite money would not be forthcoming. The English law, by which prior to 1858 divorces were granted only by Parliament and consequently at a considerable expense, illustrates the working of this principle. But, as Mr. Wilcox further remarks, "the obvious objection to having one system of law for the rich and another for the poor, makes discussion of this method of restricting divorce unnecessary." (Wilcox, op. cit. p. 58).

Restriction of Re-marriage.—Almost invariably in a discussion on this problem of divorce it is persistently asserted by many writers that most frequently divorce has been sought after and obtained for the sole purpose of giving the party interested an opportunity of entering upon a

* "Marriage, Separation and Divorce."—J. P. Bishop, vol. I., Nos. 58-59.

new and more congenial marital relation. So it has been affirmed that a limitation of re-marriage would greatly reduce the number of divorces.

In some States, as noted above, provisions have been adopted prohibiting the guilty party from marrying again. But, affording the really innocent party the right to re-marry necessarily and consistently involves the extending of this same privilege to the guilty party. If the former marriage has been dissolved for the one party, it no longer exists at all, and consequently it is also dissolved for the other. A husband without a wife, and vice versa, is a contradiction in words and in fact. Moreover, the present provisions of certain States restricting the re-marriage of the guilty party in a divorce suit are practically nil owing to the comparatively easy access to other jurisdictions wherein such provisions are set at naught. Therefore it is argued that a uniform law denying the privilege or right of re-marriage to either the innocent or the guilty divorced party —except, perhaps, they re-marry each other—would be something of a panacea for the divorce evil in our country. The late Hon. E. J. Phelps has most emphatically stated this position. "The question is not," he wrote, "whether divorce laws shall exist, but whether they shall permit the divorced parties to re-marry. Here, it is believed, will be found the mainspring of the whole mischief. If that right were taken away, nine-tenths, perhaps, ninety-nine hundredths . . . of the divorce cases would at once disappear. In the vast majority of instances the desire on the part of one or other or both to re-marry is the foundation of the whole proceeding."*

It may be remarked in passing that from the point of view of fact it is most difficult, if not morally impossible, to give any real appreciation of the scientific value, for our country, of this emphatic statement of Mr. Phelps. No means of subjecting it to a scientific test are at hand. We have no statistics of re-marriage.

---

* "Divorce in the United States."—The Forum, Dec., 1889, p. 352.

Now the total abolition of divorce in the sense of a divorce so dissolving the marital union as to confer the privilege of re-marriage on one or both parties would result practically—and this is what Mr. Phelps advocates—in the adoption of legal separation, i. e., separatio a mensa et toro. This would be the adoption by the State of the policy of the Catholic Church. While conceding that divorce is sometimes not only beneficial, but necessary to society, it is maintained that absolute divorce is not tolerable even from a high ethical, apart from the theological, point of view. All that can be accomplished by divorce for the protection of the innocent and injured individual, and for the preservation of the household—the dissolution of which is threatened by the infidelity of husband or wife—can be secured by legal separation. It is a divorce to all intents and purposes as effectual as any, except that it does not allow either party to contract a second marriage while the other consort is living.

However, suppose this kind of divorce were adopted and recognized by civil law, and that all the sanction of the law was applied to enforce the observance of the common law and statute law in conformity with this principle, would this be a satisfactory solution of the difficulty and an effectual remedy for the evils in question? The practice of divorce of this nature in the Catholic Church is certainly effectual in the case of Catholics, and we believe that were our civil law changed so as to permit only this kind of divorce, such legislation would be productive of much good in the country at large. It would create a good impression which would be far-reaching. Persons contemplating matrimony would think seriously before entering into a union from which there is no total escape. Persons already united would, in many cases, make a virtue of necessity, and the more readily resign themselves to bear with meekness the many petty grievances which are so often the seed of discord in married life, and which in the end lead to the divorce court. Ultimately, such a law would create and firmly ground a better and healthier public sentiment relative to the sacredness of marriage.

But, were it introduced into our midst at present, the moral condition of the country is such that its real moral worth would not be immediately experienced. Separations, undoubtedly very numerous, would take the place of the present divorces, and not being allowed to re-marry, it is but human to expect that the parties would resort to other means of gratifying their desires. Passion knows no law. All the objections to the restriction of re-marriage would weigh with equal force against this restriction. But time would tell. The better sentiment would eventually prevail; the true man would conquer the tendency of his lower nature. Combined with limitation of causes for granting such a divorce this would be an ideal policy for a State to adopt, it is as near to a complete solution of the question as is possible to civil legislation, and in the course of time the beneficial results of such a law would be experienced in the family—in the peace and concord of which lie the happiness and the prosperity of the State.

The Institution of Civil Marriage and Divorce.—Suppose Congress should follow the example of countries on the European continent, which exercise jurisdiction over matters pertaining to marriage and divorce, and would institute civil marriage. Suppose it instituted a marriage similar to the "marriage civil obligatoire" of the French Code of 1792, in which was set forth the principle that marriage is a civil institution, its celebration a civil transaction requiring in no case the ministry of religion. This principle was, in 1804, incorporated into the Napoleonic Code, and its influence is still felt. Would such a system solve the problem for our country?

The most fundamental and important part of such legislation as here proposed is the explicit and consistent adoption of the theory of the civil contract as the ruling principle of divorce statutes. In such a system marriage and divorce would be considered together, and the laws in relation to them made harmonious and homogeneous. At present it would seem as though our laws considered marriage and divorce as independent problems. Marriage is called "a civil contract," and is permitted to be entered into as

informally as any contract that can be made. Viewed in *itself* it is considered as a civil contract, but when looking at its dissolution our laws seem to regard it as more than a contract, and, to some extent, as a sacrament. This is not consistent. If laws are to regard marriage in the light of religion and as something sacred, then divorce is properly to be considered under the same aspect. But if marriage is solely and simply a civil contract in the eyes of our law, then it should be so regarded when laws are made for its dissolution.

It is not contended that legislation on this matter of divorce is necessarily based upon the religious or sacramental idea of marriage, but that something of this spirit is found in the history, in the development, of our divorce statutes is undeniable. It is this idea which seems to animate the legislator when he takes under advisement any modification of an existing code. It is justly argued, we think, that legal restrictions in this matter of divorce may be attributed to the fact that our legislators invariably attach some religious idea to marriage.

But in the case of the institution of civil marriage, when marriage is considered simply as a civil contract,—and all idea of its religious and sacramental nature is set aside—the law must grant no divorce at all, from the motive of expediency, or it must grant it in certain cases from the same motive. In other words, the law must grant or refuse divorce as the public and private good may seem to require, and if it grants divorce for one cause it must also grant it for all causes similar and equal to this one. This throws an altogether new aspect on the question. Instead of asking, "What does the law of God command, forbid, or permit with respect to the making or the dissolving of the marriage contract?"—as seems to be the case, to some extent at present—the law maker must only inquire, "What law does human wisdom counsel me to make for the common good?"

With regard to the moral worth of such an alteration in our marriage laws—if such a change were to be made—it must be said that, unsatisfactory as things are at present, it is preferable to leave them as they are rather than to fly

into the arms of the dangers naturally inherent in this system which, in principle, reduces marriage to the merest contract and so degrades the family. It is an indisputable fact that something of an idea of the religious sacredness of marriage pervades the mass of the people of this country. We have seen that it is this idea which crops out occasionally in the work of our lawmakers when engaged in formulating our divorce legislation which is, in spirit, based on this view of marriage. It is to the credit of our nation, as well as to her welfare, that something of this old and proper sacramental idea still exists and exercises its influence on the marital relations. It tends to preserve the sanctity and inviolability of the family, though, in our modern civilization, this seems to be in a decadent state. But sad, indeed, is it to contemplate the lamentable condition of affairs almost necessarily inaugurated under a system which destroys the very prop of the family—its sacred character. It is of the very essence of civil marriage to obliterate the religious idea of the marriage state, and thus greatly weaken the family tie. Of the result of such a system on society at large there can be no doubt. Marriage is the very cornerstone of the social structure, for the family is constituted by marriage, and society is constituted by the family. And the welfare of the nation demands that the family be more stable than it could possibly be under a system of civil marriage. Social corruption, whether ancient or modern, began in the family, and the corruption of the family carried with it the ruin of society and of all civilization. The voice of history—sacred and profane—emphatically asserts that the renowned and powerful nations of antiquity went out with the family, and it is to the restoration of the family—to the assertion and maintenance of the sanctity and stability of marriage—that the modern nations chiefly owe the moral greatness they possess. "History repeats itself," is an old and true saying, and judging from history, past and present, it seems but natural to infer that the future greatness and prosperity of our nation will increase or decrease in proportion as the nation will approach to, or depart from, the ideal of an absolutely stable marriage. The institution of civil

marriage would certainly mark a decided step in the way of departure. Such a system, threatening as it does the dissolution of the home, though it may wear the guise of law and operate through so dignified an instrumentality as a court of justice, is only the entering wedge of anarchy.

However, in general, suppose a constitutional amendment made and a system of divorce legislation enacted prescribing uniformity throughout the country, would it be satisfactory? It is unfortunate, in the existing condition of things, that a divorce obtained in one State should fail of its effect in another, and that a man or woman should be a husband or wife in New York, and at the same time a single and unmarried man or woman in the Dakotas or Nebraska. This, at least, is one of the troubles which Federal legislation might remove. And if the Federal law was a strict one, similar to that of some States, the family would be, to some extent, benefited. Its stability would be somewhat the more firmly established. But would such legislation remove all difficulty? There seems to be no reason why it should fail to do so for those who believe in the power of the nation to make laws of this kind; but those who maintain that the State has no rights in so far as the essence and indissolubility of marriage are concerned cannot accept the decisions of the civil power in this matter. Catholics are among this number. They cannot, in theory, approve of Federal legislation any more than of State legislation on this subject; but they can nevertheless be glad of any change, in the divorce laws of our country, which makes the actual results of such legislation less disastrous.

The Catholic—as becomes a Christian—believes that the words "What God hath joined together let no man put asunder," are final and decretive. The troublesome questions are, "What constitutes a true and valid marriage?" and "In what cases will God Himself annul it?" These are the two points which touch, and most touch, the Christian conscience, because that every true marriage has the divine sanction no Christian can doubt. So it is, then, a matter of the law of God. But who shall interpret this law? Shall it be the law of the land? This may seem reasonable enough.

The law of the land has, indeed, a right to speak in the name of God, and speaking thus it commands our obedience. All authority, parental, social, ecclesiastical, national, is from God, as St. Paul tells us. Therefore, it may seem that the law of the land can speak in this matter as it can in other matters—that of property, for instance. But when we come to examine the question more thoroughly we find a difficulty in this particular matter of marriage which does not exist elsewhere. There is little or no danger that the same property will be decided to belong to two different persons within the territories of the law's jurisdiction; and even in the case of conflicting national laws, as in the matter of copyright, or patent, there is no essential inconsistency in a thing belonging to one man in one place, and to another man in another place. But in the Catholic view of the fitness of things there is such an incongruity in a man's being the husband of one woman in one place and of another woman in another place. As a Christian he cannot believe that a man can in one country be divorced in the sight of God from one wife and have another, and in another country return to the one whom he left; and the only logical solution of the difficulty is the one of which he is in possession.

Naturally, the Catholic can hardly expect the world in general, or the United States in particular, to accept his views on the subject. But all who are professedly Christians believe, or at least should believe, that there is an essential right and wrong in this matter which mere human law cannot make or unmake, and to which human law should conform. But how shall man find out what constitutes this right and wrong? Scripture is vainly called to aid; scholars disagree as to its meaning, and their conclusions only become more widely divergent by discussion until, at last, faith in Scripture itself begins to waver and meanwhile the evil we are striving to remedy grows daily worse and worse. Therefore, the only way to have thoroughly satisfactory marriage and divorce laws is to have a law-making power, the jurisdiction of which is world-wide. And the only way to get at the divine law on this most im-

portant subject is to have a court which can interpret it—a court from which there can be no appeal—so that all who believe in the legitimate authority of this court shall be able to act with a clear conscience in accepting its decisions. This is the Catholic idea and practice. To a greater or lesser extent, no doubt, the same idea may prevail in other Christian denominations; individual members of the various religious sects in the country at large may be as firmly convinced of this fact as Catholics are. But the absence of any authoritative religious teaching outside the Catholic Church and the principle of private judgment introduced at the time of the Reformation, has forced those outside the communion of this Church, in this as well as in other practical matters, to the only tribunal left them—that of the State. So the State has come to be the arbiter. And difficult as it is for the State to make laws which seem on paper to meet the exigencies of such a mixed community as ours, it is still more difficult to execute such laws after they have been enacted. Mere external legislation cannot do much unless the religious and moral convictions, sentiments and habits of the people stand behind it, support it, and co-operate with it. It has been well said that "Civil legislation and statutes are merely a kind of mechanism serving a useful purpose in the living, organic society when they are in harmony with, and proportioned to its present, actual intentions and volitions." So far as these common intentions and volitions are regulated by respect for the religious and moral sacredness of marriage, thus far civil law can give protection to the civil rights and redress the civil wrongs which arise out of the marriage contract. But civil law, in the present condition of our country, with the diversity of religious opinions which are current on this matter of marriage, may, to some extent, alleviate the divorce evil,—it cannot satisfactorily remedy it. And any reform to be really effective in this matter, must of necessity go deeper than the mere question of divorce. It must begin at the bottom. It must strive to annihilate the root of the evil instead of lopping off the branches. Rather than say, "It should be a matter of extreme difficulty to obtain a divorce," our law-makers can

more profitably lament the looseness and utter recklessness with which marriages are too often contracted and, if possible, devise ways and means to check this great social evil. Unfortunately, our legislators do not heed measures intended to place safeguards around marriage. They frown upon such provisions, and characterize them as "an infringement of personal liberty." This should not be so. Marriage should be sedulously safeguarded. It is the germ of the family, and moralists and sociologists all agree that the family is the nursery of society, the hope of the State, and the cradle of its destinies. Marriage is the bulwark of the nation. If marriages are rightly contracted this protection of a nation's welfare is greatly fortified, and its weakness minimized, for with the growth of right marriage—marriage entered into with a sense of its sacred and inviolable character—divorce will disappear; but with wrong and thoughtless marriage divorce is parasitic. Therefore, let the beautiful concept of Christian, Catholic marriage more abound; let men and women learn to view marriage as something holy, in which the husband is the protector, the wife the comforter. Then will we meet with more marriages in which, while the husband performs his allotted role, the wife embodies the beautiful picture of her drawn by Washington Irving:—"As the vine which has long twined its graceful foliage about the oak, and has been lifted up by it in sunshine, will, when the hardy plant is rifted by the thunderbolt, cling round it with caressing tendrils and bind up its shattered boughs, so it is beautifully ordered by Providence that woman, who is the mere dependent and ornament of man in his happier hours, should be his stay and solace when smitten with sudden calamity, winding herself into the rugged recesses of his nature, tenderly supporting the drooping head, and binding up the broken heart."

If the American public had as strong and clean cut a conception of the necessity of the stability of the family as it has of the material demands of the individual, the chief evils of our divorce system would soon disappear. We are living in an age in which commercial interests are strong and absorbing. Yet, beneath all the hustle and bustle of

business—yea, at the bottom of all the rationalism, agnosticism, and all the other troublesome "isms" of the hour—there is a strong religious craving for light, life, and truth. This instinctive religious craving should be fostered, nourished, and cultivated. And it is to be hoped that the teaching of the Catholic Church, and the example of all who are docile and obedient to it, in proclaiming and insisting upon the absolute indissolubility of every marriage, ratified and consummated under the sacramental law of Christ, will continue to have a salutary influence on the community at large. The instruction of other religious and moral teachers, defective as it may be, and the belief and practice of the considerable number who adhere to that measure of sound doctrine which it contains, in so far as their influence prevails, are conservative of public and private morality and preservative against demoralization in the great body of the people.

Besides the Church, and whatever else is strictly ecclesiastical or formally religious in its nature, there are many potent agencies which can be made auxiliary in their respective spheres. Education, literature, the press, voluntary association—if regulated by Christian principles— are efficacious means of promoting Christian morality. Let these implant on the soil of the American public the good seed of a more wholesome literature, stronger virtue, and nobler types of the matrimonial union. Let our law-makers legislate in the presence of the fact that physical health and strength of race, which is assured by the inviolability of the family tie, is an indispensable element of national perpetuity. If it must needs be that divorce exist in our country, let it be regarded as a necessary evil; and its legislation may be presumed to be what we will it to be. Let the pulpit, the bar, the school, the press—every active agent—conspire to create a healthy public sentiment on the question, tending to suppress "divorce agencies," to lessen the number of legally recognized causes for divorce, and demanding the hearing of divorce suits in open session of the court. In the words of Judge George W. Wheeler of the superior court of Connecticut, "Let the public-spirited citizens who

are pressing for a contraction of the causes for which divorce may be procured, turn a part of their energies toward the procurement of a thorough investigation in court, of each action for divorce, by a competent official. Before such an investigation, aided by the cross-examination of a skilled and honorable advocate, the statistics would change radically. Eliminate the fraudulent and utterly untenable and unjustifiable divorce actions, and there would be less questioning of the propriety of the causes of divorce." (June 22, 1904.) Let our legislators, and the press, strain every effort to promote the movement of the American Bar Association to secure some measure of uniformity of procedure in divorce trials. This Association advocates each State's enacting a law forbidding divorce for any cause arising prior to the residence of the complainant in the State, unless for a ground adequate in the State where the cause arose; or for any cause arising in the State unless the petitioner has been an actual resident of said State for one year with a *bona fide* intention of making it his or her permanent residence; or for any cause arising out of the State unless he or she has been a resident for at least two years before bringing suit. Such provisions, if adopted by all the States, would go far to prevent the fraudulent divorces now so easily obtained by persons migrating to the divorce granting State for no other purpose than that of securing the decree. This is the first, and perhaps the greatest, evil to be prevented. If this measure of uniformity is procured, uniformity in other respects is but a short distance away. This would ultimately tend to remedy the second element of our divorce problem, namely "The Conflict of Laws," and would directly and immediately affect the first element, the increase of divorces.

It is earnestly desired that in the near future the whole question of marriage and divorce in this country will be satisfactorily settled. The task is a difficult one; the road is not all strewn with roses, and the goal cannot be reached in haste. But it is surely worth the best thought and effort of all who desire the advancement of true morality, and the increase of happy homes—where men and

women may find the highest companionship, and bring up, under the best possible conditions, children who will do honor to themselves, to their parents, to their country, and to their Creator. The problem came into being when the matter was taken out of the power of the Church; it will cease to be when the former condition of things is restored. The only thoroughly satisfactory remedy is the return to the Catholic idea of marriage, and this return alone can remove the evil of divorce. "But Catholic marriage is impracticable, impossible even, in a non-Catholic society, as is evident from the fact that no non-Catholic community retains it. . . Catholic marriage cannot be re-established by secular legislation." Nor can there be any return to Catholic marriage without a return to the bosom of the Catholic Church, for "Catholic marriage is interwoven with the whole Catholic system, and cannot be isolated from it, or observed in its purity and integrity without the Catholic faith, Catholic training and discipline, or without the gracious aids the Catholic Church supplies to her faithful children, and to none others." (Brownson, "The Family, Christian and Pagan.")

BIBLIOGRAPHY.

ALLIES, T. W.—"The Formation of Christendom." 3 ed. 4 vols. London, 1897.
Cf. vol. I. Lecture V., "New Creation of the Primary Relation Between Man and Woman."

BILLUART, C. R.—"De Consensu ad Matrimonium Req."

BISHOP, J. P.—"Marriage, Divorce, and Separation." 2 vols. Chicago, 1891.

BROWNSON, O. A.—"Brownson's Works." 20 vols. Detroit, 1887.
"The Family, Christian and Pagan." Vol. XIII., p. 526 sq.
"The Woman Question." Vol. XVIII., p. 381 sq.
"Index of Subjects." Vol. XX., words:—"Marriage;" "Divorce."

CAIRD, MONA.—"The Morality of Marriage, and Other Essays on the State and Destiny of Woman." London, 1897.

CARLIER.—"Le Mariage aux Etats-Unis." Paris, 1860.

CONVERS, D.—"Marriage and Divorce in the United States." Phila., 1889.

COUDERT, F. R., Jr.—"Marriage and Divorce Laws in Europe." New York, 1893.

DeAUGUSTINIS.—"De Re Sacramentaria." 2 Vols. New York, 1878.

DIKE, S. W.—"What Christianity Has Done for the Family." Auburndale, 1897.

DUMAS (fils).—"Le Question du Divorce." Paris, 1884.

ESMEIN, A.—"Le Mariage en Droit Canonique." Paris, 1891.

FIELDS, ELIZ.—"Freedom in Marriage." New York, 1902.

FOLK, E. E.—"The Mormon Monster, or The Story of Mormonism." Chicago, 1900.

GASPARI.—"Tract. Canon. de Matr." 2 Vols. Paris, 1891.
GIBBONS, CARD.—"Our Christian Heritage." Baltimore, 1889.
KENT, JAMES.—"Commentaries." 13 ed. 4 Vols. Boston, 1884.
LEO XIII.—Encyclicals; "Arcanum," Feb. 10, 1880; "Longinqua," Jan. 6, 1895.
LILLY, W. S.—"On Right and Wrong." London, 1881. Cf. chap. IX.
LINN, W. A.—"The Story of the Mormons." New York, 1902.
LITTLE, W. J. C.—"Holy Matrimony." London, 1900.
LUCKOCK, H. M.—"The History of Marriage." London, 1894.
MALLOCK, W. H.—"Studies of Contemporary Superstition." London, 1895.
MONSABRE.—"Conferences sur le Mariage." Paris, 1887.
MORROW, P. A.—"Social Disease and Marriage." New York, 1904.
NUTTING, J. D.—"The Private Doctrines of Mormon Theology." Cleveland, 1900.
"The True Mormon Doctrine." Cleveland, 1901.
PALMIERI.—"Tractatus de Matrimonio Christiano." Rome, 1880.
PERRONE.—"De Matrimonio Christiano." 3 Vols. Leodii, 1861.
REYNAUD, P.—"La Civilisation Paienne et la Famille." Paris, 1901.
ROSMINI.—"Des Lois Civiles concernant le Mariage des Chretiens." (Translated from the Italian by L. Rupert, Paris, 1853.)
SCHOULER, J.—"On Husband and Wife." Boston, 1882.
"On Domestic Relations." 5 ed. Boston, 1895.
SPRAGUE, H. H.—"Women Under the Law of Massachusetts, their Rights, Privileges, and Disabilities." Boston, 1903.
SNYDER, W. L.—"The Geography of Marriage. A Consideration of the Legal Complexities Connected with Marriage in the United States." New York, 1895.

STARCKE, C. N.—"La Famille dans les Differentes Societes." Paris, 1899.

STIMSON, F. J.—"American Statute Law." 2 Vols. Boston, 1886-1892.

STIMSON, F. J.—"Uniform State Legislation." Phila., 1895.

TANQUEREY, A.—"Synopsis Theologiae Dogmaticae." 3 Vols. Baltimore, 1895.

WILCOX, D. F.—"Ethical Marriage." Ann Arbor, Mich., 1900.

WILCOX, W. F.—"The Divorce Problem. A Study in Statistics." New York, 1897.

WOOLSEY, T. D.—"Divorce and Divorce Legislation." 2 ed. rev. New York, 1882.

WRIGHT, C. D.—"Marriage and Divorce." Report of the U. S. Commissioner of Labor, 1889. Cf. revised edition of 1897.

YOUNG, A.—"Catholic and Protestant Countries Compared." New York, 1895.

"Book of Mormon." Orson Pratt's edition of 1881.

"Digest of Canons." Protestant Episcopal Church, 1887.

"Doctrine and Covenant of the Church of Jesus Christ of Latter-Day Saints." Salt Lake City, 1886.

"Encyclopedia of American and English Law." art. "Marriage;" "Divorce."

"Sixty-First Report of Births, Marriages, and Deaths in Massachusetts for 1902." Boston, 1903.

MAGAZINE ARTICLES directly and indirectly pertaining to the subject:—

THE ATLANTIC MONTHLY, Boston, Mass.:—

"The Marriage Celebration in Europe." Feb., 1888.

"The Marriage Celebration in the Colonies." March, 1888.

"The Marriage Celebration in the United States." April, 1888.

"Reform in the Celebration of Marriage." May, 1888. (Four articles by Frank Gaylord Cook.)

THE CATHOLIC WORLD, New York, N. Y.:—
"Divorce Legislation in Connecticut." Vol. IV., p. 101.
"The Indissolubility of Christian Marriage." No. I. Vol. V., p. 567.
"The Indissolubility of Christian Marriage." No. II. Vol. V., p. 684.
"The Church—The Champion of Marriage." Vol. XVI., p. 585.
"Divorce and Divorce Laws." Vol. XXV., p. 340.
"Divorce and Some of its Results." Vol. XXXI., p. 550.
"Dr. Woolsey on Divorce." A. F. Hewitt. Vol. XXXV., p. 11.
"Some Aspects of the Law of Marriage." A. F. Hewitt. Vol. XXXVIII., p. 721.
"The Catholic Law of Marriage." A. F. Hewitt. Vol. XXXIX., p. 145.
"Divorce." L. C. B. Vol. XLVIII., p. 23.
"The Divorce Question." Geo. M. Searle. Vol. XLVIII., p. 822.
"Divorce and Its Effects on Society." Dr. Geo. Giglinger. Vol. LVIII., p. 92.
THE CONTEMPORARY REVIEW:—
"The Problem of the Family in the United States." S. W. Dike. Dec. 1893.
"The Limits of Divorce." C. P. Garrison. Feb. 1894.
"Marriage and Divorce." Canon Knox Little. Aug. 1895.
"Divorce in the United States." Gertrude Atherton. Sept. 1897.
THE FORUM:—
"National Divorce Legislation." E. H. Bennet. Vol. II., p. 429.
"Marriage Laws." E. H. Bennet. Vol. III., p. 219.
"To Marry or not to Marry." J. H. Browne. Vol. VI., p. 432.
"Divorce in the United States." E. J. Phelps. Vol. VIII., p. 349.

"The Ethics of Marriage." W. S. Lilly. Vol. VIII., p. 504.
"Matrimony and the State." M. J. Savage. Vol. X., p. 115.
"The Revolt Against Marriage." E. L. Linton. Vol. X., p. 585.
"The Census of Sex, Marriage and Divorce." C. D. Wright. Vol. XVII., p. 484.
"The Matrimonial Market." Vol. XXI., p. 747.

THE NORTH AMERICAN REVIEW:—
"Divorce: Is It Wrong?" (several papers) Vol. CXLIX., p. 513.
"The Question of Divorce." (several papers) Vol. CLXIX., p. 641.
"Women's Views of Divorce." (several papers) Vol. CL., p. 110.
"Final Words on Divorce." (several papers) Vol. CL., p. 263.
"The Future of Marriage." John L. Heaton. Vol. CLIII., p. 126.
"Divorce from a French Point of View." A. Naquet. Vol. CLV., p. 721.
Divorce Made Easy." Prof. S. J. Brun. Vol. CLVII., p. 11.
"Some Comments on Divorce." Mrs. Kate G. Wells. Vol. CLXXIII., p. 508.

THE POLITICAL SCIENCE QUARTERLY:—
"Statistics of Marriage and Divorce." S. W. Dike, Vol. IV.
"A Study in Vital Statistics." W. F. Wilcox. Vol. VIII.

HARPER'S MONTHLY MAGAZINE:—
"Economic Aspects of Mormonism." Richard T. Ely. April, 1903.